

The Lanterman Act Fair Hearing Process by the State of California Office of Administrative Hearings (OAH)

The Purpose of a Hearing

Through regional centers and other agencies, the State of California provides valuable services to people with developmental disabilities. These services are coordinated by the state Department of Developmental Services and authorized by the Lanterman Developmental Disabilities Services Act (Act). To qualify for state funding, a regional center or developmental center (also called a service agency) must ensure that its decisions are fair and in the recipient's best interest. When a recipient is dissatisfied with a center's decision, the Act permits the recipient to file a request for a fair hearing.

If you are a recipient of state developmental disability services, then this information sheet can give you an overview of what to expect from the fair hearing process. This information sheet is also meant for an authorized representative of the recipient, such as a parent, guardian or attorney.

A hearing is a presentation made by you and the regional center in front of an Administrative Law Judge (ALJ). The ALJ is not an employee of the regional center or Department of Developmental Services, but an impartial judge. The hearing is an opportunity for you to present your arguments, witnesses and other evidence to convince the ALJ that your position is the right one. The regional center also has the opportunity to present its position. Based on arguments from both sides, the evidence, and the Act, the ALJ will make the final decision.

Scheduling a Hearing

After you receive notice of proposed action, you have 30 days in which to file a hearing request if you disagree with the decision or action. You must state your request in writing or complete a hearing request form from the regional center. After mailing in your written request or form, the regional center will notify you with the hearing date and location.

The fair hearing is held within 50 days of the date your hearing request form was postmarked or received by the regional center, whichever is earlier. Hearings may last a few hours or several days, depending on the issues involved. They are usually held at the regional center. If the date or location is not reasonably convenient for you, you and the regional center may arrange another time or place.

Preparing for Hearing

You and your representative have the right to look at the regional center's file relating to your case prior to the hearing.

Legal Representation

Most families represent themselves in the hearing process. However, you may choose to be represented by an advocate or by an attorney at your own expense. The regional center can give you information about advocacy assistance.

Witnesses and Other Evidence

Evidence is information that you present to the ALJ to prove your case. Evidence can be in the form of documents, reports, or witness testimony under oath. Evidence must be relevant to the matters in dispute. If the evidence is not relevant, reliable or believable, the ALJ may decide that the evidence cannot be admitted or relied upon. Be prepared to explain to the ALJ why the evidence is important to your case.

Although you may present letters or written statements to the ALJ, generally it is more convincing to call witnesses who can help present your information and answer questions. You may either call witnesses to volunteer to come to the hearing, or you may subpoena witnesses to require their attendance at the hearing. The ALJ will not speak to witnesses except at the hearing. Contact the Office of Administrative Hearings (OAH) well before the hearing date to get the subpoena forms.

Certain witnesses, such as expert witnesses like doctors, may demand a fee for testifying at the hearing. These fees are paid by the party calling the witness. Choose your witnesses based on their special or direct knowledge of the matters they will discuss at the hearing. Prepare a list of questions to ask each witness to help you present the background information on your case and to establish their qualifications as knowledgeable witnesses.

Exchanging Documents

At least 5 calendar days before the hearing, you and the regional center must exchange copies of any documents, such as the individual planning document, that you each intend to use at the hearing. Suggestion: Make two additional copies of all documents. You must bring the original and these two copies with you to the hearing. You must also exchange a list of witnesses you intend to call and what you expect them to talk about. At the hearing, the ALJ will decide whether to accept a witness who was not on the list or a document that was not given to the other party before the hearing.

The Hearing Itself

At the beginning of the hearing the ALJ will explain how the hearing will proceed. Feel free to ask any questions about what you are expected to do. The entire hearing will be recorded on audio tape.

Each party may give a short opening statement to tell the ALJ what the party wants and what the issues are in the case. Then, both you and the regional center will present your evidence. For example, if you think the regional center should provide you with a particular service, then you must prove to the ALJ, by witness testimony or other evidence, why you are eligible for that service.

After all evidence has been submitted to the ALJ, each party may make a closing argument, but it is not required. If you make a closing argument, you should summarize the case and discuss what the evidence has shown.

The Decision

A written decision will be mailed to you, usually within 10 days of the date the hearing is concluded. Any decision that is not in your favor will be effective 10 days after you and your authorized representative receive the decision by certified mail. If you or your authorized representative cannot understand English, the written decision will be provided in English and in the language you or your authorized representative understands.

Frequently Asked Questions

Q: *How can I arrange for an interpreter at the hearing or for special accommodations for someone who is disabled?*

A: Immediately contact the regional center or OAH to request a sign or language interpreter at the hearing for you or for a witness. If persons you expect to attend the hearing have special needs that require reasonable accommodation, please contact OAH as soon as possible so arrangements can be made.

Q: *May I try to settle my disagreement with the regional center or agency in a less formal meeting than a hearing?*

A: Yes. Cases often settle without going to a hearing, even after the date for a hearing has been set. You may settle at an informal meeting with the regional center or agency. You may also request mediation. Both of these options are voluntary on your part. If you are not able to resolve the case at an informal meeting or mediation, you still have the right to participate in a fair hearing.

Q: *Is it possible to change the fair hearing date after it has been scheduled?*

A: Yes. Either you or the regional center may ask for the hearing date to be changed. This is called a continuance of the hearing. Only OAH may authorize a continuance and will only do so for good cause. Put your request in writing as soon as you learn of the need for a continuance, and state all the reasons why you need a continuance. Mail or FAX your request to OAH. A copy of your request must be sent to the regional center or agency. If there is not enough time to send a written request, you may request a continuance by telephone. To obtain a continuance, you may have to waive in writing the statutory timelines contained in Welfare and Institutions Code sections 4712 and 4712.5. These timelines include, but are not limited to, the time for scheduling the hearing in the case and the time for rendering a final or proposed decision by the ALJ.

Q: *Where can I get more information about fair hearings related to the Lanterman Developmental Disabilities Services Act?*

A: More information on the Act and related regulations is available at a law library and on the internet. The hearing procedures of the Act are codified in the California Welfare and Institutions Code, Division 4.5, Chapter 7, sections 4700-4731, and may be accessed at <http://www.leginfo.ca.gov>. Related regulations are published under Title 17 of the California Code of Regulations, Public Health Division 2, Chapter 1, Subchapter 9, and may be accessed at <http://ccr.oal.ca.gov/>.